

REMARKS

This Amendment is submitted in response to the Office action dated January 13, 2004. Applicant gratefully acknowledges withdrawal of the rejection under 35 U.S.C. § 112.

As a preliminary matter, Applicant notes that the marking of this Office action as final was mistaken because the previous Amendment was not entered until after a Request for Continued Examination was filed and this is the first Office action following entry of the Amendments. The Applicant requests that the status of this Office action be changed to nonfinal.

The Office action rejected claims 28, 30, 32, 40, 42, 44-45, 49 under 35 U.S.C. § 102(e) as anticipated by US 5,445,629. Claims 1-27, 31, 33, 35, and 37 remain canceled without prejudice or disclaimer. Claims 34, 36, 38-39, 43, and 46-49 were objected to as being dependent upon a rejected base but the Office action indicated these claims would be allowable if rewritten in independent form, including all of the limitations of the base claim and any intervening claims. Presently amended claims 43 and 46-49 have been rewritten in independent form and should now be allowable. These Amendments do not add new matter. Claim 40 has been amended to include a limitation requiring methylene blue "having a pH of less than 7.0." Support for this amendment can be found in the specification at page 11, lines 8-10 and 16 thus no new matter has been added to the application. Applicants believe that the rejections have been overcome or are improper in view of the amendments and for the reasons set forth below.

Independent claim 40 was rejected in the Office action under 35 U.S.C. § 102(e) as anticipated by US Patent No. 5,445,629 ("*Debrauwere*"). Claim 40 has now been amended to require "methylene blue having a pH of less than 7.0." Applicant submits that this limitation distinguishes the invention of claim 40 over *Debrauwere* which contains no disclosure regarding the pH of its methylene blue solutions. In addition, it is submitted that all pending claims that now depend from claim 40, including claims 42, 44, 45, 50 and 51 are allowable because they depend from allowable base claim 40. Moreover, because *Debrauwere* lacks any disclosure relating to the pH of methylene blue solutions, claim 40 would not be obvious over *Debrauwere*, even if *Debrauwere* could be used as a reference under 35 U.S.C. § 103, which it cannot for reasons to be pointed out below.

Claims 28, 30 and 32 were rejected under 35 U.S.C. § 102(e) as anticipated by US Patent No. 5,445,629 ("*Debrauwere*") on the basis that claim 28, and its dependent claims 30 and 32, are substantially similar to claim 40. Apparently, the Office action takes the position that *Debrauwere* discloses each and every feature of the claimed invention as defined by claims 28, 30 and 32. Applicants request that this rejection be reconsidered and withdrawn.

Claim 28 is limited to methods that require storing an amount of methylene blue and an amount of the blood or blood component in separate sterile containers, each container having an inner surface made of a non-polyvinyl chloride, plastic material. *Debrauwere* fails to disclose separate sterile containers, each having an inner surface made of a non-polyvinyl chloride, plastic material. Rather, the *Debrauwere* method involves flowing blood into a container that can be made of a polyvinyl chloride material that is plasticized and includes stabilizers. (col. 4, l. 1-3) When *Debrauwere* specifically discloses the use of methylene blue, the methylene blue is initially stored in a separate tube that has an inner layer constructed of non-PVC material, however, *Debrauwere* has no disclosure concerning the composition of any other containers in this embodiment. Thus, *Debrauwere* does not disclose the use of separate containers wherein each container has an inner surface made of a non-polyvinyl chloride, plastic material as would be required to support the present rejection under 35 U.S.C. § 102(e). Consequently, the Applicants request that the rejection be reconsidered and withdrawn. Moreover, because *Debrauwere* lacks any disclosure relating to separate containers wherein each container has an inner surface made of a non-polyvinyl chloride, plastic material, claim 28 and its dependent claims 30, 32, 34, 36, 38 and 39, would not be obvious over *Debrauwere*, even if *Debrauwere* could be used as a reference under 35 U.S.C. § 103, which it cannot.

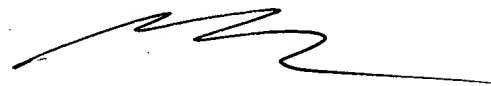
As the Examiner will recall, *Debrauwere* does not constitute a reference that can support a rejection under 35 U.S.C. § 103 because subject matter that only qualifies as prior art under 102(e) does not preclude patentability under section 103 where the subject matter and claimed invention are owned by the same person or subject to an obligation of assignment to the same person at the time the invention was made. 35 U.S.C. § 103(c). For these reasons, Applicants submit that claim 28 and its dependent claims 30, 32, 34, 36, 38, and 39 are allowable over *Debrauwere*.

For the foregoing reasons, Applicants respectfully submit that the present application is in condition for allowance and earnestly solicit reconsideration of same.

Respectfully submitted,

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